

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHADLY S. BALLARD,

Plaintiff,

VS.

**UNION PACIFIC RAILROAD CO.,
OLIVER BECENTI,
JOHNNY ADISON and TED TOM, JR.,**

Defendants.

8:06CV718

ORDER

This matter is before the court on the plaintiff's Motion for Additional Time (Filing No. 26). The plaintiff states he has had difficulty serving the defendant Johnny Adison and seeks additional time to serve Mr. Adison by publication. **See** Filing No. 26 and Exhibit A. The complaint was filed on September 19, 2006, in the United States District Court for the District of Arkansas. **See** Filing No. 1. The defendant Union Pacific Railroad Company filed an answer on December 28, 2006 (Filing No. 23). The record shows the defendant Oliver Becenti was served on November 11, 2006, and Ted Tom, Jr. was served on October 16, 2006. **See** Filing Nos. 24 and 25. Under the circumstances, the court finds the plaintiff's motion should be granted with regard to additional time in which to serve defendant Adison.

Furthermore, “[t]he court may at any time dismiss an action for lack of prosecution when it appears it is not being prosecuted with reasonable diligence.” It remains the plaintiff’s duty to go forward in prosecuting the case by, for example, filing a motion for the Clerk’s entry of default pursuant to Fed. R. Civ. P. 55 and NECivR 55.1(a) against defendants who were served, but who have failed to timely answer. Accordingly, the plaintiff shall have an opportunity to show cause why this action should not be dismissed against Oliver Becenti and Ted Tom, Jr. Upon consideration,

IT IS ORDERED:

1. The plaintiff's Motion for Additional Time (Filing No. 26) is granted.

2. The plaintiff shall have to **on or before March 30, 2007**, to effect service of the summons and complaint upon the defendant Johnny Adison.

3. The plaintiff shall show cause why this case should not be dismissed as against the defendant Oliver Becenti and Ted Tom, Jr. for failure to prosecute. The showing of cause shall be filed electronically on or before the close of business **on February 9, 2007**.

Dated this 17th day of January, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge